

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Damorius D. Gaines, #346524,
a/k/a Damorius Dontavis Gaines,
a/k/a Damorius Dontavious Gaines,

Plaintiff,

vs.

Geoffrey Benedict Eaton, Catherine T. Huey,
Craig A. Gardner, Cordell J. Maddox,
Stan Overby, Alan Wilson, William Blitch, Jr,
Lillian L. Meadows, Letitia Verdin, Ben Aplin,
Chad McBride,

Defendants.

C.A. No. 8:22-416-HMH-TER

OPINION & ORDER

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Thomas E. Rogers, III made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina.¹ Plaintiff Damorius D. Gaines (“Gaines”), a state prisoner proceeding pro se, filed this action alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. In his Report and Recommendation filed on March 28, 2022, Magistrate Judge Rogers recommends dismissing Plaintiff’s malicious

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

prosecution claim without prejudice² and all remaining claims with prejudice and without issuance and service of process. (R&R, generally, ECF No. 17.)

Gaines timely filed objections to the Report and Recommendation.³ (Obj., generally, ECF No. 19.) Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that Gaines's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims.⁴ Plaintiff's objections are therefore without merit. Accordingly, after a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge Rogers' Report and Recommendation and incorporates it herein.

² Magistrate Judge Rogers noted that Gaines may bring a section 1983 action based on malicious prosecution in the future if the charges connected to his allegations are terminated in his favor.

³ See Houston v. Lack, 487 U.S. 266 (1988).

⁴ The court acknowledges that Gaines attached a section 2254 petition to his objections. To the extent Gaines is challenging the validity of his imprisonment, he must file a separate petition pursuant to 28 U.S.C. § 2254 after exhausting his post-conviction remedies in state court. See Heck v. Humphrey, 512 U.S. 477, 481 (1994) (“[H]abeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983.”).

It is therefore

ORDERED that Plaintiff's malicious prosecution claim is dismissed without prejudice.

It is further

ORDERED that Plaintiff's remaining claims are dismissed with prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
August 11, 2022

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.